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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/917,142	07/27/2001	Arthur Vaysman	INN0-6	1380
29956	7590	05/17/2005	EXAMINER	
TIMOTHY P. O'HAGAN 8710 KILKENNY CT FORT MYERS, FL 33912			HARRELL, ROBERT B	
			ART UNIT	PAPER NUMBER
			2142	
DATE MAILED: 05/17/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/917,142

Applicant(s)

VAYSMAN, ARTHUR

Examiner

Robert B. Harrell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2001 et al.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-21 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 27 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☒ Other: see attached Office Action.

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1. Claims 1-21 are presented for examination.
2. The applicant should use this period for response to thoroughly and very closely proof read and review the whole of the application for correct correlation between reference numerals in the textual portion of the Specification and Drawings along with any minor spelling errors, general typographical errors, accuracy, assurance of proper use for Trademarks <sup>TM</sup>, and other legal symbols ®, where required, and clarity of meaning in the Specification, Drawings, and specifically the claims. Minor typographical errors could render a Patent unenforceable and so the applicant is strongly encouraged to aid in this endeavor.

3. The following is a quotation of the second paragraph of 35 U.S.C 112:

**The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.**

4. Claims 1-21 are rejected under 35 U.S.C 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The scope of meaning of the following claim language is not clear:

- a) "the telephony clients"-claim 1;
- b) "the lowest latency time"—claims 4 and 6 (last two lines);
- c) "the one of the conferencing servers"—claim 7 (line 10);
- d) "the selected conferencing server"—claim 7 (lines 15-16);
- e) "the digital audio data"-claim 7 (line 16);
- f) "the quality of service characteristic"-claim 15 (second to the last line)[\*suggest using: -the one quality of service characteristic\*)].

5. As to 22 (a-f) above, these are but a few examples of numerous cases where clear antecedent bases are lacking and not an exhausting recital. Any other term(s) or phrase(s) over looked by examiner and not listed above which start with either "the" or "said" and do not have a single proper antecedent bases also is indefinite for the reasons outlined in this paragraph. Also, these are but a few examples where term(s) or phrase(s) are introduced more than once without adequate use of either "the" or "said" for the subsequent use of the term(s) or phrase(s). Moreover, multiple introduction of a term, or changes in tense, results in a lack of clear antecedent bases for term(s) or phrase(s) which relied upon the introduced term. Failure to correct all existing cases where clear antecedent bases are lacking can be viewed as non-responsive. Nonetheless, should a response yield all claims allowable short *a few* cases where clear antecedent bases are lacking within the claims, a preemptive authorization to enter an examiner's amendment to the record to correct such would accelerate a notice of allowance over a final rejection. Such could be added at the end of an applicant's response with the following statement: "Examiner is hereby authorized, without the need of further contact by examiner, to enter an Examiner's Amendment to correct any cases where antecedent bases are lacking." if the

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applicant so elects. This does not diminish the applicant's requirement to correct all such cases not so listed in the example few given above nor prohibit any amendments after a notice of allowance by the applicant.

6. With respect to claim 7 (lines 5 and 6) it cannot be clearly ascertained if "digital audio" in lines 5 and 6 are one and the same or are two different data. Such, also, causes a lack of clear antecedent bases for the remainder of the claim(s).

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this action:

**A person shall be entitled to a patent unless -**

**(b) the invention was patented or described in a printed publication in this or foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.**

8. Claims 1-21 are rejected under 35 U.S.C. 102 (b) as being anticipated by Krishnaswamy et al. (5,867,494).

9. Prior to addressing the grounds of the rejections below, should this application ever be the subject of public review by third parties not so versed with the technology (i.e., access to IFW through Public PAIR (as found on <http://portal.uspto.gov/external/portal/pair>)), this Office action will usually refer an applicant's attention to relevant and helpful elements, figures, and/or text upon which the Office action relies to support the position taken. Thus, the following citations are neither all-inclusive nor all-exclusive in nature *as the whole of the reference is cited* and relied upon in this action as part of the substantial evidence of record. Also, no temporal order was claimed for the acts and/or functions.

10. Per claim 1, Krishnaswamy taught an Internet telephony (e.g., see col. 74 (lines 35-et seq.) and col. 80 (lines 25-et seq.)) conferencing (e.g., see Title) server system which comprised a plurality of conferencing centers (e.g., see figure 10B (1084 and 1086)), each configured for hosting a conference call amongst a plurality of the telephony clients (e.g., see Abstract and figure 10B (1080)), and wherein each telephony client was configured to measure at least one quality of service characteristic (e.g., see col. 105 (line 51)) of communication with each conferencing center and to select one of the conferencing centers based on the quality of service characteristic for hosting a conference call (e.g., see col. 105 (lines 41-53)).

11. Per claim 2, the applied reference also taught wherein each telephony client was configured to exchange both audio and video data with the selected one of the conferencing centers per the Title and Abstract as examples.

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12. Per claim 3, the applied reference also taught wherein the telephony client measured at least one quality of service characteristic by sending a plurality of ping packets to a conferencing server at each conferencing center (e.g., see figure 10B (1084 and 1086)), receiving a plurality of ping response packets, and measuring latency time and packet loss for each conferencing server per col. 104 (line 24-et seq.) as an example.

13. Per claims 4, 5, and 6 see col. 104 (line 56-et seq.) and col. 106 (line 48-et seq.) as examples.

14. Per claims 7-21, these claims do not teach or defined above the correspondingly rejected claims given above, and are thus rejected for the same reasons given above. However, digital audio and video data was addressed above while col. 81 (lines 20-25), as examples, taught the use of microphones, speakers, compressing and decompressing the digital audio data while col., 93 (lines 56-64) taught the use of UDP datagrams via the selected telephony conferencing server as an example and elsewhere within the applied reference. Col. 160 (line 6), as an example, taught Q.931 while col. 131 (line 39-et seq.), as an example, taught H.323 (a internet telephony conference standard) while H.245 was taught in col. 131 (line 34), as an example.

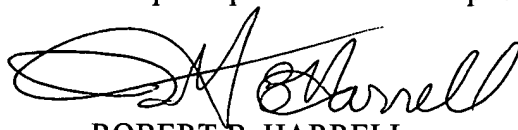
15. In summary, Krishnaswamy taught a system where a client would ping several conference call center servers to ascertain which had the best overall Quality of Service (i.e., low latency and packet loss) to be used in transferring digital audio and video Internet telephony data in UDP digitized data packets that where compressed and decompressed while using the Q.931, H.323. and H.245 standards to conduct Internet Audio and Video Telephony Conferences among several such clients.

16. A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the data of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (571) 272-3895. The examiner can normally be reached Monday thru Friday from 5:30 am to 2:00 pm and on weekends from 6:00 am to 12 noon Eastern Standard Time.

18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack B. Harvey, can be reached on (571) 272-3896. The fax phone number for all papers is (703) 872-9306.

19. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.



ROBERT B. HARRELL  
PRIMARY EXAMINER